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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/923,210	08/06/2001	Christopher Randall Beharry	8195M	8980
24024	7590	06/30/2004		
CALFEE HALTER & GRISWOLD, LLP 800 SUPERIOR AVENUE SUITE 1400 CLEVELAND, OH 44114			EXAMINER TRAN LIEN, THUY	
			ART UNIT	PAPER NUMBER
			1761	

DATE MAILED: 06/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/923,210

**Applicant(s)**BEHARRY, CHRISTOPHER  
RANDALL**Examiner**

Lien T Tran

**Art Unit**

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09 June 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,4-11,13,17 and 21-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,4-11,13,17 and 21-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |                                                                                                                        |                                                                                         |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                                                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____                                                |

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1. Claims 1, 4-11,13,17, 21-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wong et al(5667838) in view of Brabbs( 4596714) and the Jif recipes.

Wong et al disclose nut spreads having relatively low viscosity, reduced stickiness and increased nut flavor intensity. The nut spread is made from nut solids and fat/oil, plus other ingredients such as nut butter stabilizers, flavorants, bulking agents etc... Nut chunks, flavored or candied bits and other optional components can be included in the nut spreads at various levels. The other components include chocolate chips, butterscotch, peanuts, jellies, praline nuts or other candies. The nut spreads comprise up to about 15% stabilizer. (See columns 4-8)

Wong et al do not disclose forming a snack bar comprising the nut spread and the properties as claimed.

The Jif recipes disclose various peanut butter recipes including peanut butter bar such as "No Bake Peanut Butter Bars".

Brabbs discloses a peanut butter-filled snack product. Brabbs teaches peanut butter ordinary comprises from 1-5% stabilizer. (See col. 3)

It is obvious that the Wong et al disclosure encompasses super stabilized nut spread because they disclose up to 15% stabilizer can be added while Brabbs teaches nut spread ordinary comprises 1-5% stabilizer. When more than the ordinary amount of stabilizer is added, it is obvious the nut spread is a super stabilized nut spread and will have the penetration value and density as claimed. It would also have been obvious to use the Wong et al nut spread in a snack bar such as the one shown by the recipes to

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obtain the benefits of reduce stickiness and increased nut flavor intensity. When the nut spread is used to make snack bar, it is obvious the bar will have the Bar Strength as claimed because the same material is used. It would also have been obvious to enrobe snack bar with a confectioner's material to obtain different flavoring; this is well known in the art. As to the amount of nut spread, it would have been obvious to use varying amounts of nut spread depending on the flavor intensity desired. If it is desired to have strong nut flavor, it would have been obvious to use a large amount of nut spread. The same is true with adding food bits to the bar; the amount can vary depending on the taste and flavor desired.

In the response filed with the filing of the RCE on 5/20/04, applicant argues Wong in view of Brabbs and Jif recipes does not teach or suggest a snack bar comprising a super-stabilized nut spread having 1-4% more stabilizer and the penetration value as claimed. This argument is not persuasive. Wong et al teach to make nut spread that can contain up to about 15% stabilizer, preferably from about 1-7%. Brabbs shows that the normal amount of stabilizer used in peanut butter is 1-5%. Thus, the teaching of up to 15% of stabilizer in Wong et al encompasses the making of a super-stabilized nut spread when 6,7,8,9 % stabilizer is used. If the nut spread contains more stabilizer than normally used and the amount falls within the range claimed, then it is obvious the nut spread will have the penetration value as claimed. If applicant contends the nut spread containing 6,7,8,9,10,11,12,13,14,15% stabilizer does not have the penetration value claimed, the burden of proof is shifted to applicant to show that such spread does not have the penetration value claimed. The use of the

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type of peanut butter spread in a snack bar would have been an obvious matter of choice. There is nothing in the Jif recipes that states that a peanut butter as disclosed by Wong et al cannot be used. Applicant also argues Brabbs teach using unmodified peanut butter. The Brabbs reference is only relied upon to show that peanut butter normally contains about 1-5% stabilizer.

Applicant's arguments filed 5/20/04 have been fully considered but they are not persuasive.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Tuesday, Wednesday and Friday.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

June 27, 2004

  
LIEN TRAN  
PRIMARY EXAMINER

*Group 1700*